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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/572,713	03/17/2006	Martin Oberhomburg	2003P01023WOUS	4393

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EXAMINER

NDUBIZU, CHUKA CLEMENT

ART UNIT	PAPER NUMBER
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3743

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04/27/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/572,713	Applicant(s) OBERHOMBURG, MARTIN	
	Examiner CHUKA C. NDUBIZU	Art Unit 3743	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 February 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-31 is/are pending in the application.
- 4a) Of the above claim(s) 1-11 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 12-31 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on February 10 2009 has been entered.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 12-21 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

Claim 12 refers to without regard to any conflicting control instructions which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

1. Claims 12-15, 18-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Repper et al 2005/0089809 in view of Hanson 6,161,506. Repper teaches the invention as claimed (figs 1-3). With regard to claim 12 Repper discloses a gas cooking surface, comprising: at least one gas burner 114; a gas supply 123 coupled to said gas burner for supplying gas thereto; a control device 111 for adjusting the heating capacity stages of said gas burner; said gas burner depending on said adjusted heating capacity stage, operates in one of a continuous mode in which said gas is supplied continuously to said gas burner (page 4, para [0042, 0043]) or a clocked mode in which said gas burner is supplied with said gas in an controlled pulsating manner (the power level and sequence is programmed into the controller, page 4 para [0044]); said control device including a touch contact 119, 115 for switching between said heating capacity stages (see fig 1); said touch contact switches controlling said heating capacity stages

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associated with said continuous mode and also with said clocked mode (page 2 para [0016]); and said control device automatically controls said burner to a starting heating capacity stage in which said gas burner operates in said continuous mode when said gas burner is switched on by said touch contact (page 4 para [0044]), said control device operating to control the burner in a continuous mode starting heating capacity stage without regard to any conflicting control instructions thereby operating said burner in a continuous mode of operation upon actuation of the start touch control switch. (Although Repper et al do not specifically disclose this they disclosed that in the clocked mode the "on and off" starts with the flame being "on" and that the control system is configured to shut down the system if the flame detector does not detect a flame during the "on" sequence. Since the "flame on" sequence lasts for a finite time it follows that the clock mode starts with a continuous mode (flame on) first.). Therefore the burner always starts in a continuous mode.

However, Hanson discloses a pulsed combustion system wherein the flame is started in a continuous mode (no pulsation) first before the pulsation is started in order to ensure that the chamber and the fuel/air has been heated up to a temperature that would sustain combustion (column 8 lines 40-52).

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Repper's gas cooking surface by including starting the clock mode combustion first in the continuous mode before switching to clock mode in order to allow the burner system to warm up as taught by Hanson (column 8 lines 40-52). Thus which ever mode is selected the burner first starts in a continuous mode.

With regard to claim 13 Repper also discloses wherein said gas burner is switched on by a first actuation of said touch contact (page 5 para [0053]).

With regard to claim 14 Repper also discloses wherein said starting heating capacity stage automatically adjusted by said control device is a minimal heating capacity stage in said continuous mode (controller capable of starting at the lowest capacity that can be sustained, page 4 para [0043]).

With regard to claim 15 Repper also discloses wherein said touch contact having a plus button 203 (arrow up) for increasing the heating capacity and a minus button 203 (arrow down) for reducing said heating capacity (fig 2).

With regard to claim 18 Repper also discloses the cooking surface including touch contact having plus button 203 (arrow up) for increasing the heating capacity, and minus button 203 (arrow down) for reducing the heating capacity wherein control system is capable of switching off the gas burner by touching one button 208 (p.5 [0053]).

Switching the burner off by simultaneously actuating the plus button and the minus button is deemed a matter of design choice since the Applicant has not disclosed any criticality for using two buttons.

With regard to claim 19 Repper also discloses the cooking surface including touch contact having plus button 203 (arrow up) for increasing the heating capacity, and minus button 203 (arrow down) for reducing the heating capacity said gas burner is switched off by actuating said minus button in the minimum heating power stage in said clock mode. (Actuating the minus button at the minimum power stage would reduce the gas flow below a level where the flame could not be detected and since the flame detector is always on in the clock mode; Repper

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discloses that the controller would automatically shut off the gas flow if no flame is detected. (p. 4 [0044])).

With regard to claim 20 Repper also discloses the cooking surface including touch contact having plus button 203 (arrow up) for increasing the heating capacity, and minus button 203 (arrow down) for reducing the heating capacity said gas burner is switched off by actuating button 208.

Switching the burner off by actuating the plus button at a maximum heating power stage in the clocked mode is deemed a matter of design choice. It is with the purview of one of ordinary skill in the art to program the controller to shut the burner down if one actuated the plus button at the maximum heating capacity for safety reason since the microcontroller 101 is programmable. (p. 2[0015]).

2. With regard to claim 21 Repper also discloses wherein said gas burner operates in an upper heating capacity range in said continuous mode and in a lower heating capacity range in said clocked mode (page 4 para [0043, line 10-12; para [0044 line 1-3]).

Claims 16 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Repper in view of Hanson and further in view of Damrath et al 5,938,425. With regard to claims 16 and 17 Repper also discloses the cooking surface including touch contact having plus button 203 (arrow up) for increasing the heating capacity, and minus button 203 (arrow down) for reducing the heating capacity, wherein the gas burner can be turned on by actuating one button 208.

With regard to claims 16 Damrath discloses a gas cooking surface in a gas-fired cooking appliance (fig 1) comprising: one gas burner 2; a gas supply 1 coupled to said gas burner for

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supplying gas thereto; a control device 4 for adjusting the heating capacity stages of said gas burner using increasing or decreasing buttons; wherein said gas burner is switched on by a first actuation of at least one button (one button turns gas on at any heating level of choice, column 9 line 3-10).

With regard to claims 17 Damrath also discloses a gas cooking surface wherein the maximum heating capacity in the continuous mode can be set by actuating a single button (s15 in fig 2) which would which would turn all the valves on (maximum power) (column 9 lines 1-10). Designating the single button a minus button is a design choice that would not affect the working of the burner.

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Repper in view of Hanson's gas cooking surface by including the limitations taught by Damrath and recited above in order to provide a cooking surface where the control device can the burner on to any desired level by actuating only one button.

Claims 19 is rejected under 35 U.S.C. 103(a) as being unpatentable over Repper in view of Hansen and further in view of Frasnetti et al 5,924,857.

Repper in view of Hansen teaches the invention as disclosed above. However, Repper in view of Hanson does not teach a gas cooking surface, wherein said gas burner is switched off by actuating said minus button in a minimum heating power stage in said clocked mode.

Frasnetti discloses a controlled gas burner (fig 1), wherein said gas burner is switched off by actuating the minus button in a minimum heating power stage (column 2 line 35-48).

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Repper in view of Hanson's gas cooking surface by including the limitations taught by Frasnetti and recited above in order to provide a cooking surface with enhanced safety measures where the gas flow would be shut off if the gas flow rate is reduced below the level that can sustain a flame.

Claims 22-31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Repper in view of Hanson and Damrath and further in view of Frasnetti et al 5,924,857. With regard to the method of operation claims 22 to 31, having met the structural limitations in Repper in view of Hanson and Damrath and further in view of Frasnetti as discussed above, the limitations of method of operation recited in claims 22 to 31 are obviously met.

Response to Arguments

Applicant's arguments filed on February 10 2009 have been fully considered but they are not persuasive. Some of the arguments were addressed above. Applicant's arguments with regard to claim 1 are moot due to the new grounds for rejection. Repper discloses starting the clock mode first in the continuous as discussed above and Hanson disclosed starting a pulse combustor first in the continuous mode before switching on to the clocked mode as discussed above..

After due consideration it is determined that Applicant's claims do not distinguish Applicant's invention over the prior art of record.

Conclusion

The prior art made of record in the attached USPTO 892 and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to CHUKA C. NDUBIZU whose telephone number is (571)272-6531. The examiner can normally be reached on Monday - Friday 8.30 - 4.30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kenneth Rinehart can be reached on 571-272-4881. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Chuka C Ndubizu/
Examiner, Art Unit 3743

/Kenneth B Rinehart/
Supervisory Patent Examiner, Art Unit
3743

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